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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,984	03/23/2004	Donald E. Weder	8404.047	2284

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/806,984	WEDER, DONALD E.	
	Examiner	Art Unit	
	Jeffrey L. Gellner	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Terminal Disclaimer

The terminal disclaimer filed on 6 June 2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6,705,046 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-9, 11-17, 20-22, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newport (AU 42319/78; 1st document in Foreign documents section of Applicant's 1449) in view of Moses (226,922).

As to Claims 1, 8, 12, Newport discloses a tubular sleeve (Figs. 1 and 2) comprising a base portion (region below 10 of Figs. 1 and 2) having a tapered shape and the lower end sized to contain a pot; an upper portion (region above 10 of Figs. 1 and 2) detachable from the base via a detaching element (10 of Figs. 1 and 2); a decorative pattern ("ABC" of Figs. 1 and 2) on the base with a non-linear upper boundary (for example, the letter "A" has a sides that are non-linear) below the detaching element (Figs. 1 and 2) and a pattern free zone between the detaching element and the non-linear upper boundary. Not disclosed is the zone positioned only above the

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non-linear upper boundary. Moses, however, discloses a floral container with a zone that is free of decorative pattern above a non-linear upper boundary (in Fig. 1, the nondecorative zone is above the zig-zag upper boundary of the decorative pattern). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tubular sleeve of Newport by adding the design of Moses so as to change the aesthetic appeal of the sleeve in an attempt to generate interest in consumers.

As to Claims 2 and 13, Newport as modified by Moses further discloses the upper portion sized to substantially surround and enclose a floral grouping disposed in the pot (Fig. 2 of Newport).

As to Claims 3, 4, 14, and 15, Newport further discloses the upper portion adapted to suspend (12 of Fig. 1 of Newport) the tubular sleeve from support elements.

As to Claims 5, 9, and 16, Newport as modified by Moses further discloses the peaks 15 mm (from Fig. 1 calculated to the top of the letter "A" of Newport) below the detaching element and the trough 20 mm (from Fig. 1 calculated to the bottom of side of letter "A" of Newport).

As to Claims 7, 11, and 17, Newport as modified by Moses further discloses the sleeve in a flattened state (Fig. 1 of Newport).

As to Claims 20 and 24, Newport discloses a potted plant (Fig. 2 of Newport) and a tubular sleeve (Figs. 1 and 2 of Newport) comprising a base portion (region below 10 of Figs. 1 and 2 of Newport) having a tapered shape and the lower end sized to contain a pot; an upper portion (region above 10 of Figs. 1 and 2 of Newport) detachable from the base via a detaching element (10 of Figs. 1 and 2 of Newport); a decorative pattern ("ABC" of Figs. 1 and 2 of Newport) on the base with a non-linear upper boundary (for example, the letter "A" has a sides that are non-linear of Newport) below the detaching element (Figs. 1 and 2 of Newport) and a

pattern free zone between the detaching element and the non-linear upper boundary. Not disclosed is the zone positioned only above the non-linear upper boundary. Moses, however, discloses a floral container with a zone that is free of decorative pattern above a non-linear upper boundary (in Fig. 1, the nondecorative zone is above the zig-zag upper boundary of the decorative pattern). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tubular sleeve of Newport by adding the design of Moses so as to change the aesthetic appeal of the sleeve in an attempt to generate interest in consumers.

As to Claims 21 and , Newport as modified by Moses further discloses the upper portion sized to substantially surround and enclose a floral grouping disposed in the pot (Fig. 2 of Newport).

As to Claims 22 and 25, Newport as modified by Moses further discloses the peaks 15 mm (from Fig. 1 calculated to the top of the letter “A” of Newport) below the detaching element and the trough 20 mm (from Fig. 1 calculated to the bottom of side of letter “A” of Newport).

Claims 6, 10, 18, 19, 23, and 26-31 are rejected under 35 U.S.C. §103(a) as being unpatentable over Newport (AU 42319/78; 1st document in Foreign documents section of Applicant’s 1449) in view of Moses (226,922) in further view of Evans et al. (US 3,512,700; 6th document of page 3 of Applicant’s 1449).

As to Claims 6, 10, 23, and 26, the limitations of Claims 1, 8, 20, and 24 are disclosed as described above. Not disclosed is the lower end with a gusset. Evans et al., however, discloses a sleeve with a bottom and a gusset in the bottom (Figs. 4 and 5). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the sleeve of Newport as modified by Moses by adding a gusseted bottom as disclosed by Evans et al. so as to hold in any overflow water and to have a sleeve without puckers (see Evans et al. at col. 1 lines 53-63).

As to Claim 18, Newport discloses a tubular sleeve (Figs. 1 and 2) comprising a base portion (region below 10 of Figs. 1 and 2) sized to contain a pot; and, a decorative pattern ("ABC" of Figs. 1 and 2) on the base with a non-linear upper boundary (for example, the letter "A" has a sides that are non-linear) below the upper edge of the base portion (Figs. 1 and 2) and a pattern free zone between the upper edge of the base portion and the non-linear upper boundary. Not disclosed is the zone positioned only above the non-linear upper boundary and the lower end with a gusset. Moses, however, discloses a floral container with a zone that is free of decorative pattern above a non-linear upper boundary (in Fig. 1, the nondecorative zone is above the zig-zag upper boundary of the decorative pattern); Evans et al. disclose a sleeve with a bottom and a gusset in the bottom (Figs. 4 and 5).. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tubular sleeve of Newport by adding the design of Moses so as to change the aesthetic appeal of the sleeve in an attempt to generate interest in consumers and to add a gusseted bottom as disclosed by Evans et al. so as to hold in any overflow water and to have a sleeve without puckers (see Evans et al. at col. 1 lines 53-63).

As to Claim 19, Newport as modified by Moses and Evans et al. further disclose the peaks 15 mm (from Fig. 1 calculated to the top of the letter “A” of Newport) below the detaching element and the trough 20 mm (from Fig. 1 calculated to the bottom of side of letter “A” of Newport).

As to Claims 27 and 30, Newport discloses a potted plant (Fig. 2) and a tubular sleeve (Figs. 1 and 2) disposed about the potted plant (Fig. 2) comprising a portion (region below 10 of Figs. 1 and 2) sized to contain a pot; an upper portion (region above 10 of Figs. 1 and 2) detachable from the base via a detaching element (10 of Figs. 1 and 2); and, a decorative pattern (“ABC” of Figs. 1 and 2) on the base with a non-linear upper boundary (for example, the letter “A” has a sides that are non-linear) below the detaching element (Figs. 1 and 2) and a pattern free zone between the detaching element and the non-linear upper boundary. Not disclosed is the zone positioned only above the non-linear upper boundary and the lower end with a gusset. Moses, however, discloses a floral container with a zone that is free of decorative pattern above a non-linear upper boundary (in Fig. 1, the nondecorative zone is above the zig-zag upper boundary of the decorative pattern); and, Evans et al. disclose a sleeve with a bottom and a gusset in the bottom (Figs. 4 and 5). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Newport by adding the design of Moses so as to change the aesthetic appeal of the sleeve in an attempt to generate interest in consumers and by adding a gusseted bottom as disclosed by Evans et al. so as to hold in any overflow water and to have a sleeve without puckers (see Evans et al. at col. 1 lines 53-63).

As to Claim 28, Newport as modified by Moses and Evans et al. further disclose the upper portion sized to substantially surround and enclose a floral grouping disposed in the pot (Fig. 2 of Newport).

As to Claims 29 and 31, Newport as modified by Moses and Evans et al. further disclose the peaks 15 mm (from Fig. 1 calculated to the top of the letter "A" of Newport) below the detaching element and the trough 20 mm (from Fig. 1 calculated to the bottom of side of letter "A" of Newport).

Response to Arguments

Applicant's arguments filed 6 June 2005 have been fully considered but they are not persuasive. Applicant's arguments are: (1) Newport does not disclose a zone of decoration with a non-linear upper boundary (Remarks page 14, lines 1-4); (2) Newport does not disclose a nondecorative zone which is only above the non-linear upper boundary (Remarks page, 1st complete para.); and, (3) Evans et al. does not teach a zone of decoration with a non-linear upper boundary or does not disclose a nondecorative zone which is only above the non-linear upper boundary (Remarks page 14, list 6 lines of text).

As to argument (1), Examiner considers the design of Newport to have a non-linear upper boundary because the upper boundary of the letter is non-linear. If one were to trace along the upper boundaries of the letters of Newport the trace would not be a straight line. Hence, the letters upper boundary is non-linear.

As to argument (2) Examiner has changed the rejection to reflect Applicant's change in claim language. Moses discloses a portion of a floral container with a decorative zone that is

completely decorative (the zone below the zig-zag line) and a nondecorative zone that is completely nondecorative (the zone above the zig-zag line).

As to argument (3), Newport and Moses disclose the decorative and nondecorative zones. Evans et al. is relied upon to disclose a gusset.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

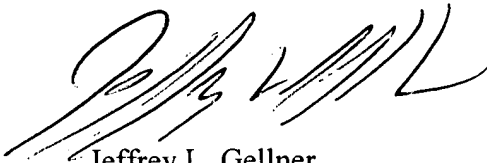
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'J. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner
Primary Examiner
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